

Board of Adjustment
Minutes
July 5, 2016

Meeting was called to order at 6:00 p.m. by Chairperson Moe Richardson. Those in attendance: Moe Richardson, Lori Boren, Gary Ulch and Roch Player. Also in attendance: Zoning Administrator, Matt Siders and David and Angela Randall, applicants.

1. Approval of Agenda. Motion made by Player, seconded by Boren to approve agenda. Carried all.
2. Approval of minutes from May 11, 2016. Motion made by Boren, seconded by Ulch to approve minutes. Carried all.
3. Public Hearing and discussion and possible action on a request for a variance for a fence at 123 2nd Avenue SW, Mount Vernon, Iowa. Siders explained that in late April or May, the Randall's had put up a fence on their property. Mr. Randall called Siders and said that he was unaware that he needed a building permit for it and had thought that it was on the permit that was approved for his garage. Mr. Randall proceeded to fill out a permit for the fence that had been put up. After it was put up and Siders reviewed the location of the fence, it was discovered that there were issues with some of the ordinances in effect (height and location). Siders explained that the fence was 6 feet in height and did not have 50% opening, which are both against the ordinance for the location of the fence. Siders also explained discussed "blockface", which is referenced on page 7-3, Setback Adjustments 1(b). It states, "If a building is to be built on a parcel of land within 100 feet of an existing building on one side only, the minimum front yard shall be the setback of the adjacent building". He went on to say that zoning is about conforming, consistency and having the ability to walk out your front door and look both ways and see down the street. This is what "blockface" is referring to. Because the Randall's only have one house on one side of them, the minimum front yard setback shall be the setback of the adjacent building. The adjacent house would be 217 2nd Street SW with an 8.5 foot setback. The Randall's fence is 4.5 feet from the property line, therefore the City is asking them to push the fence back to 8.5 feet. They would like to keep it where it is. If they were to move it back roughly 4 feet, they would be allowed to have it 6 feet high with 100% closed. The fence can be located where it is, it just can't be 6 feet high and 100% closed, as it is now.

Angela Randall explained that there are several college students in the area that cut through their yard to go to the bars. The Randall's have children that are outside using the yard and they decided to put the fence up to keep people from

walking through their yard. There is also traffic from the Bijou. Richardson asked why they did not get a permit for the fence before it was built. Angela explained that they thought it was part of the permit that was issued for the garage but when they realized that it wasn't, they immediately came up to City Hall and applied for the permit. Richardson said that the fence looked nice but it is contrary to code. He asked about moving it back to conform. Dave Randall said if it is moved back, people would be able to look in the window, it would be in the middle of the walkway and would take 2.5 feet off of their yard.

Player explained that there are certain questions that need to be answered to show justification for a variance or denial of a variance. Those questions must be satisfied in order to grant a variance.

Does the property have an unusual shape or topography that creates exceptional difficulties for using the property for its zoned use? (exceptional narrowness, unusual shape or topography) No

(a) Strict application of the zoning ordinance will produce undue hardship and would deprive the applicant of rights commonly enjoyed by other properties in the same district under the terms of this ordinance. Boren stated that there are no other properties in the area that had a fence like this up and did not agree that there was a hardship. All board members agreed.

(b) Such hardship is not shared generally by other properties in the same zoning district and in the same vicinity. N/A

(c) The authorization of such variance will not be of substantial detriment to adjacent property and the character of the district will not be changed by the granting of the variance. Correct. All board members agreed that the variance would not be of substantial detriment.

(d) The granting of such variance is based upon reason of demonstrable and exceptional hardship as distinguished from variations for purposes of convenience, profit, or caprice. No. Ulch felt that the variance would not be a detriment to the zoning district. Player asked if there was an attractive nuisance of foot traffic through their yard which nobody else has because it's a direct path. Boren said that the code is not saying that they cannot have a fence, it is saying that it can't be closed and in the position that it is in. She went on to say that they could have a fence to stop the foot traffic coming through, it just couldn't be closed and in the place it is in.

(e) The condition or situation of the property concerned is not of so general or recurring a nature as to make reasonably practicable a general regulation to be adopted as an amendment to this Zoning Ordinance. No. This is something that comes up over and over again that requires a zoning change.

(f) The granting of the variance will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of any Ordinance or Resolution. Correct.

Richardson stated that he didn't know why a variance couldn't be issued. It looks good and does not create a safety hazard. Boren agreed that the fence looked great and it didn't affect her either way, but felt that Board of Adjustment couldn't just grant a variance because something is already done and it looks good. The board must explain and justify how a variance is granted, and did not feel that a variance was justified in this case. Angela Randall disagreed, saying that their residence was in the middle of business traffic and people going through their yard. Player said the issue was not whether there could be a fence but where the fence was located. For him, zoning is to put things into context with the surroundings and was inclined to granting it because there are two structures on either side of the fence that ties into and it looks appropriate, rather than being set back. He also stated that this was not a typical residence because it was surrounded by businesses. Player felt that a hardship would be if they were required to move the fence it would cause them to have to reconfigure their porch.

Boren made a motion to call for a vote on granting a variance for the fence as applied for and keeping it where it is. All in favor of keeping the fence where it is according to the application for a building permit, allowing for a height of 5 feet 5 inches and 50% closed: Richardson, Player, Ulch. Voting no: Boren. Variance passes.

Meeting adjourned at 6:47 p.m., July 5, 2016.

Respectfully submitted,
Marsha Dewell
Deputy Clerk